

<b>Bell v City of New York</b>
2022 NY Slip Op 32854(U)
August 24, 2022
Supreme Court, New York County
Docket Number: Index No. 154223/2021
Judge: William Perry
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT:** HON. WILLIAM PERRY **PART** **23**

*Justice*

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ALEX BELL,

Petitioner,

- v -

CITY OF NEW YORK, NEW YORK CITY POLICE  
DEPARTMENT, DERMOT SHEA

Respondents.

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**INDEX NO.** 154223/2021

**MOTION DATE** 07/22/2021

**MOTION SEQ. NO.** 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

In this Article 78 proceeding, Petitioner Alex Bell seeks an order, pursuant to the Freedom of Information Law (“FOIL”), directing Respondents the City of New York, the New York Police Department (“NYPD”), and Police Commissioner Dermot Shea to produce certain “non-individually identifiable data requested, specifically [the] name, command, and year appointment” of NYPD personnel. (NYSCEF Doc No. 1, Petition, at 7.)

**Background**

On October 20, 2020, Petitioner submitted a FOIL request to the NYPD Records Office seeking:

1. A list of all employees of the NYPD in a list with the employee name, age, sex, race, current precinct (where applicable), current rank, current division, year joined the NYPD, current residence zip code and 2019 total pay.
2. A list of NYPD employees who participated in the 2019 ANNUAL PHYSICAL FITNESS INCENTIVE PROGRAM and the results of their test.

(Petition at 2; NYSCEF Doc No. 12.)

Respondents denied the initial request on October 22, 2020, on the grounds that the information sought was exempt from disclosure, pursuant to Public Officers Law (“POL”) §87[2][b], because disclosure of the information sought would constitute “an unwarranted invasion of personal privacy.” (NYSCEF Doc No. 13.)

Petitioner appealed the denial on November 18, 2020, stating that:

I have not requested any personal private information for specific employees, and thus my request cannot be for disclosure of any private information. The names, rank and current pay of members of the NYPD are already publicly available. The current resident zip code is an aggregate value that is not personal information. In 2016, Alex Morgan Bell vs New York Police Department index number 100108-16 was settled and the NYPD released to the plaintiff the list of precincts and zip code residences of NYPD employees.

As to the second request, employees results in a fitness incentive program are not related to an officer’s personal privacy.

(NYSCEF Doc No. 14.)

A Records Access Appeals Officer replied on December 4, 2020, granting the appeal to the extent of remanding the request back to a Records Access Officer for a further search to be conducted for the requested records. (NYSCEF Doc No. 15.)

On January 14, 2021, a Records Access Officer (“RAO”) granted the appeal in part, providing “53 pictures of a handwritten notebook in which 800 NYPD members full names, unique NYPD tax registry number, age, sex, current command, promotion rank, time taken to run 1.5 miles, time to complete job standard test, and unique signatures [and] a pdf showing approximately 30,000 NYPD [sic] rank, age, gender, ethnic [sic], current division, residence zip code.” (Petition at ¶10.) The RAO, however, redacted from the records the “name, specific command, and appointment year,” because, “when combined with information which is already publicly available,” such disclosure would constitute “an unwarranted invasion of personal privacy (POL § 87[2][b]) and could endanger the life or safety of the individual (POL § 87[2][f]).” (NYSCEF

Doc No. 16.) The RAO also redacted “the data point ‘2019 pay’ because that information [was] already publicly available.” (*Id.*)

Petitioner filed a second appeal on February 11, 2021, stating that, although the 2019 payroll amounts were already publicly available, the redaction of names made it “impossible to connect payroll amount to the entries in the spreadsheet.” (NYSCEF Doc No. 17.) Petitioner also stated that “the names of officers are already publicly available and hence the rejection based on ‘unwarranted invasion of personal privacy’ is mistaken” and offered to change his request by removing “the first name and last name and to instead list the number of civilian complaints as received by the Civilian Complaint Review Board[.]” (*Id.*)

The second appeal was denied on February 12, 2021. Petitioner commenced this action on April 30, 2021.

Respondents cross-move for dismissal, arguing that the Petition is moot because Respondents have performed a diligent search and provided all disclosable records located, and that all redactions were properly made, pursuant to POL § 87[2][f], as such disclosure could endanger the life and safety of NYPD members and their families. (NYSCEF Doc No. 11, Opposition.) In support, Respondents submit the affidavit of John Miller, the NYPD Deputy Commissioner for Intelligence and Counterterrorism, who avers that, inter alia, disclosure of NYPD officers’ names and zip codes could be dangerous, especially in consideration of data gathered by the Threat Assessment and Protection Unit (“TAPU”). (NYSCEF Doc No. 19, Miller Affidavit.)

### **Discussion**

It is well settled that all records of a public agency, including police records, are presumptively open for public inspection and copying, and that the burden rests at all times on the

government agency to justify any denial of access to records requested under FOIL. (*See New York State Rifle and Pistol Assoc. v Kelly*, 55 AD3d 222, 224 [1st Dept 2008]; *New York Civil Liberties Union v New York City Police Dept.*, 20 Misc 3d 1108[A] [Sup Ct, NY County 2008]; *see also, Gould v New York City Police Dept.*, 89 NY2d 267, 274 [1996] [FOIL was enacted “[t]o promote open government and public accountability”]; Public Officers Law § 84; *Matter of Abdur-Rashid v New York City Police Dept.*, 31 NY3d 217, 224 [2018].)

In furtherance of FOIL's legislative policy favoring disclosure, “[e]xemptions are to be narrowly construed to provide maximum access, and the agency seeking to prevent disclosure carries the burden of demonstrating that the requested material falls squarely within a FOIL exemption by articulating a particularized and specific justification for denying access.” (*Matter of Capital Newspapers Div. of Hearst Corp. v Burns*, 67 NY2d 562, 566 [1986].)


POL § 87[2][f] permits an agency to redact information from records that, if disclosed, “could endanger the life or safety of any person.” “The agency in question need only demonstrate ‘a possibility of endanger[ment]’ in order to invoke this exemption.” (*Bellamy v New York City Police Dept.*, 87 AD3d 874, 875 [1st Dept 2011], *citing Connolly v New York Guard*, 175 AD2d 372, 373 [3d Dept 1991].)

Here, Respondents have satisfied their burden of articulating a possibility of endangerment to NYPD personnel and their families. Although Petitioner may be correct that the names of NYPD personnel may already be available in the public record, Mr. Miller explains that releasing the names of personnel, together with their correlating appointment years, specific commands, and residential zip codes, could be dangerous because it would provide sufficient information for individuals to perform internet searches and discover the home addresses of those NYPD personnel. (Miller Aff. at ¶¶ 9-12, 39.)

Respondents have “submitted affidavits outlining the dangers faced by police officers generally, and ... thus met its burden of showing a possibility that disclosure of names could endanger the lives or safety of police [officers and their families].” (*Empire Ctr. for Pub. Policy v New York City Police Pension Fund*, 188 AD3d 595, 595–96 [1st Dept 2020].) Accordingly, it is hereby

ADJUDGED that the application is denied and the petition is dismissed, with costs and disbursements to respondent; and it is further

ADJUDGED that respondent recover from petitioner, costs and disbursements in the amount as taxed by the Clerk, and that respondent have execution therefor.

<u>8/24/2024</u> DATE		 WILLIAM PERRY, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED	<input checked="" type="checkbox"/> DENIED
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> SUBMIT ORDER
		<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> OTHER
		<input type="checkbox"/> REFERENCE